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IN THE

Supreme Court of the United States

OCTOBER TERM, 1914, A. D.

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,

vs.

C. L. de FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the Railroad Commission of Louisiana,
Appellees.

Brief for Appellees.

HISTORY OF THE CASE.

Order No. 295 of the Railroad Commission of Louisiana, which is contested in this suit, was adopted, after a full investigation, on August 8, 1903, and is as follows:

> "No railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects, or any shipper, or consignee, at rates approved or established by the Commis-

> sion, whether such cars are loaded or empty, or whether such cars are to be loaded with freight to be shipped out of the State, or are loaded with freight shipped into the State.
>
> All tariffs for the service of switching cars in the State of Louisiana shall be filed with the Commission within thirty days from the date of this order, and all the Commission's rules and orders relative to rates and changes in rates will also apply to switching charges."

A certified copy of the order was attached to the answer as Exhibit "A," and is printed at the end of this brief in full, to be used in the case, by agreement of counsel, having been omitted from the transcript.

The Illinois Central Railroad Company did not comply with this order, and on February 10, 1904, filed a bill in equity in the Circuit Court of the United States, which was succeeded by the District Court of the United States, for the Eastern District of Louisiana. The members of the Railroad Commission of Louisiana and the Railroad Commission of Louisiana were made defendants, and an injunction was asked, restraining the Railroad Commissioners from enforcing or attempting to enforce the order complained of.

On the 25th day of February, 1904, Hon. Charles Parlange, United States District Judge for the Eastern District of Louisiana, after a preliminary hearing, granted an injunction **pendente lite.**

The case was finally submitted upon bill and answer, and upon an agreed statement of facts, in the United States District Court for the Eastern District of Louisiana, and, after taking the case under consideration, the court rendered the following terse opinion:

> "This case has remained on the docket long enough for the Supreme Court to indirectly decide it. (See Grand Trunk Railway Company, et al., vs. Michigan Railroad Commission decided December 8, 1913.) The restraining order heretofore issued will be recalled and set aside and the bill dismissed without prejudice." (Tr. 17.)

Subsequently , a decree was entered in accordance with this opinion, whereupon the Illinois Central Railroad Company took an appeal directly to this court upon the ground of the unconstitutionality of the order, the appeal operating as a supersedeas.

The pertinent facts upon which the Commission's order is based are:

1. That previous to the adoption of the order, track connections existed between the principal railroad lines in the State of Louisiana, both at junctions and at terminal points, and that complainant's tracks and terminals at New Orleans connect with all other railroads entering that city.

2. That through routes were thereby established and rates for the transportation of freight via these

through routes to be delivered at the terminals of most of the lines in the State existed then, and previous to the time the order was adopted, and have continued to exist, having been changed in minor particulars from time to time. Such through routes and the rates applicable thereto are not disturbed.

3. That new contracts have been made from time to time for the transportation of freight over the various lines in Louisiana for delivery at terminals and new tariffs containing through rates, and separate tariffs containing switching and terminal charges, to apply on shipments switched from one line to another at terminal points, including New Orleans, have been published and filed, both with the Railroad Commission of Louisiana and with the Interstate Commerce Commission, by the Illinois Central Railroad Company. These tariffs are not disturbed by the Commission's order.

4. The Illinois Central Railroad Company is a party to many such tariffs and actually handles freight offered it by its connections, and delivers freight to its connections at junction points, and at New Orleans, and other terminal points, wherever it has track connections, on through rates, when they exist.

5. The order of the Commission here attacked does not interfere with the rates transporting the shipment to the junction or terminal, and would have no effect where a through rate is in effect, or where there are arrangements in tariffs for interline or intercity switching; but only applies before or after the "line haul" begins, and where no through rates and arrangements exist.

6. The Railroad Commission of Louisiana has not prescribed a tariff of rates which shall be charged for the service of switching cars from one connecting line to points on another connecting line, either at junction points or at terminals, and therefore confiscation is not an issue.

7. That there is a public necessity for intercity switching without discrimination.

8. The Commission's order applies only to points where there are existing track connections.

9. The city ordinances of the city of New Orleans specially provide that the Illinois Central Railroad Company shall switch cars over its tracks in the city of New Orleans at reasonable rates.

10. The order requires a transportation service to be performed without discrimination. It is in no particular distinguishable in principle from orders or statutes requiring track connections, and the prompt handling of cars, and such statutes

and orders have been upheld as not violating the constitution.

11. The order is not in conflict with the provisions of the Act to regulate commerce.

12. The order does not compel the appellant to give the use of its tracks and terminal facilities to any other railroad. It only regulates their use in a proper manner.

12. The order is not in conflict with the doctrines laid down in Louisville & N. R. R. Co. vs. Stock Yards Co., 212 U. S. 132, or McNeil vs. Southern Ry. Co., 202 U. S. 545.

13. Nor is it controlled by the Sabine Tram Case, 227 U. S. 111.

14. This case is governed by the doctrines announced in Grand Trunk Ry. Co. vs. Michigan Railroad Commission, 231 U. S. 457, Gulf, Colorado & Santa Fe R. Co. vs. Texas, 204 U. S. 403, and Chicago, Milwaukee & St. Paul R. Co. vs. Iowa, 233 U. S. 334.

15. Since a carrier cannot refuse to switch cars for its connections at junctions when adequate compensation is paid for the service, it must perform this service without discrimination. It can not switch for one connecting carrier or shipper and refuse to switch for others.

16. The value of the terminals is important only in determining what compensation is reasonable

for the service performed, a question not here involved.

17. The order does not impose a burden upon, but is in aid of, interstate commerce.

I.

The Railroad Commission of Louisiana has power and authority to adopt Order No. 295. The laws of the State of Louisiana require railroads operating in Louisiana to perform the service.

The laws of Louisiana applicable to such cases, and the authority of the Railroad Commission to establish the rule which is here attacked, are contained in the articles of the Constitution of Louisiana.

Article 263 of the Constitution of 1898, of Louisiana, which is a reproduction of Art. 235 of the Constitution of 1879, provides that:

> "The exercise of the police power of the State shall never be abridged nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the State."

Article 271 of the Constitution of Louisiana, which is a reproduction of Art. 243 of the Constitution of 1879, is as follows:

> "Any railroad corporation or association organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and connect at

the State line with railroads of other States. **Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.**"

Article 272 of the Constitution of Louisiana provides:

> "Railways heretofore constructed, or that may be hereafter constructed in this State, are hereby declared public highways, and railroad companies common carriers."

This was also a part of the State Constitution of 1879, as Article 244.

Article 284 of the Constitution of Louisiana defines the power and authority of the Commission, and is as follows:

> "Art. 284. The power and authority is hereby vested in the commission, and it is hereby made its duty, to adopt, change or make reasonable and just rates, charges and regulations, to govern and regulate railroad, steamboat and other water craft, and sleeping car, freight and passenger tariffs and service, express rates, and telephone and telegraph charges, to correct abuses, and prevent unjust discrimination and extortion in the rates for the same, on the different railroads, steamboat and other water craft, sleeping car, express, telephone and telegraph lines of this State, and to prevent such companies from charging any greater compensation in the aggregate for

the like kind of property or passengers, or messages, for a shorter than a longer distance over the same line, unless authorized by the commission to do so in special cases; to require all railroads to build and maintain suitable depots, switches and appurtenances, wherever the same are reasonably necessary at stations, and to inspect railroads and to require them to keep their tracks and bridges in a safe condition, and to fix and adjust rates between branch or short lines and the great trunk lines with which they connect, and to enforce the same by having the penalties hereby prescribed inflicted through the proper courts having jurisdiction.

The commission shall have power to adopt and enforce such reasonable rules, regulations, and modes of procedure, as it may deem proper for the discharge of its duties, and to hear and determine complaints that may be made against the classification or rates it may establish, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts, required or authorized by these provisions. The Commissioners shall have power to summon and compel the attendance of witnesses, to swear witnesses, and to compel the production of books and papers, to take testimony under commission, and to punish for contempt as fully as is provided by law for the district courts."

While the law does not specifically state that the orders of the Commission shall be **prima facie** correct, all of the decisions which have been so far ren-

dered by the State and Federal Courts recognize that the presumption of reasonableness attaches to the orders of the Commission whenever there has been an investigation and a full opportunity allowed for a hearing.

Railroad Com. of La. vs. Cumberland Tel. & Tel. Co., 212 U. S. 414, 53 L. ed. 577.

Texas & Pac. Ry. Co. vs. Railroad Com. of La., 192 Fed. 280, 112 C. C. A. 538, affirmed by U. S. Supreme Court, 232 U. S. 338, 53 L. ed. 630.

Thompson vs. Railroad Commission of La., et al., 198 Fed. 691.

T. & P. Ry. Co. vs. R. R. Com. of La., 127 La. 387, 53 South 660; M. L. & T. R. R. & S. S. Co. vs. R. R. Com. of La., 127 La. 636, 53 South 890.

II.

The order was directed against all railroads operating in the State of Louisiana.

It is admitted by plaintiff that Order No. 295 was adopted by the Railroad Commission of Louisiana after a full hearing and investigation (Tr. 16). Afterwards, the Commission reached the opinion that a rule relative to switching charges at points where switching may be done or is necessary was a reasonable requirement in the interest of commerce. Before making its Order No. 295 final, upon the application of the Illinois Central Railroad Company,

the Commission reopened the case, took additional evidence and heard further arguments. The carrier at that time (October 3, 1903) presented its case as fully as it considered necessary. On December 16, 1903, with this record before it, the Commission, after giving further consideration to the order, and its requirements, determined that it was both reasonable and necessary and refused to modify or alter its original terms.

Therefore, it cannot be said that the Commission's action in adopting the rules complained of was arbitrary.

III.

The order contested does not deprive the appellant of its liberty to contract, nor of its property without due process of law, nor does it deny it the equal protection of the laws, in violation of the fourteenth amendment.

One of the contentions made in the bill of complaint is that the complainant will be deprived by the order attacked of the privilege of entering into just, reasonable and legal contracts relative to its property.

The Court has considered this question and decided adversely to complainant's contention.

In the case Wisconsin vs. Jacobson, 179 U. S. 287, 45 L. ed. 194, 21 Sup. Ct. Rep. 115, this contention was considered and rejected as being without merit.

The controversy was similar in many respects to the one in this case.

In Atchison, T. & S. F. R. R. Co. vs. Denver R. R., 110 U. S. 701, 28 L. ed. 291-297, the defendant in error was seeking to require the Atchison, Topeka & Santa Fe Railroad to interchange freight, and the defense of the Santa Fe was that such a requirement would interfere with its contracts with other lines. The Court decided that such a relief was legislative and not judicial, but went very fully into the discussion of the equities presented. Discussing the question of contractual rights, the Court said:

> "The Legislature cannot take away the right to a physical union of two roads, but whether a connecting business shall be done over them after the union is made depends on legislative regulation or contract obligation."

In closing the case, the Court says:

> "The vital question in this case as it now comes before us is whether the relief required is legislative in its character or judicial. We think it is legislative and that, upon the existence of facts, a court of chancery can afford no remedy."

The Court is now reviewing a case of legislative action, the Railroad Commission of Louisiana having acted in accordance with a grant of power, and an obligation conferred upon it by the Constitution of the State of Louisiana.

In Chicago, Milwaukee & St. Paul Railway Company vs. Iowa, 233 U. S. 334, 58 L. ed. 988, Sup. Ct. Rep. 334, the insistence was that an order of the State Railroad Commission of Iowa requiring a railway carrier to accept reshipments in the cars of other carriers deprived the carrier of the liberty of contract, and of its property without due process of law, contrary to the fourteenth amendment. But the Court rejected this contention, saying:

> "Further, the plaintiff in error insists that the enforcement of the order would deprive it of its liberty of contract and of its property without due process of law, and would deny to it the equal protection of the laws, in violation of the fourteenth amendment. We find these objections to be without merit. It was competent for the State, acting within its jurisdiction, and not in hostility to any Federal regulation of interstate commerce, to compel the carrier to accept cars which were already loaded and in suitable condition for transportation over its line. The requirement was a reasonable one. It cannot be said that the plaintiff in error had a constitutional right to burden trade by insisting that the commodities should be unloaded and reloaded in its own equipment. Upon this point the case, M. & P. R. Co. vs. Jacobson, 179 U. S. 287, 45 L. ed. 194, 21 Sup. Ct. Rep. 115, is decisive. There is no essential difference, so far as the power of the State is concerned, between such an order as we have here and one compelling the carrier to make track connections, **and to receive cars from connecting roads, in order**

> **that reasonably adequate facilities for traffic may be provided.** (Our gothic.) See also Minneapolis & St. L. R. Co. vs. Minnesota, 186 U. S. 257, 263, 46 L. ed. 1151, 1156, 22 Sup. Ct. Rep. 900; Atlantic Coast Line R. Co. vs. North Carolina Corp. Commission, 206 U. S. 1, 19, 27, 51 L. ed. 933, 941, 945, 27 Sup. Ct. Rep. 585 11 Ann. Cas. 398; Missouri P. R. Co. vs. Kansas, 216 U. S. 262, 54 L. ed. 472, 30 Sup. Ct. Rep. 330; Grand Trunk R. Co. vs. Michigan Railroad Commission, 231 U. S. 457, 468, ante, 310, 317, 34 Sup. Ct. Rep. 152."

This doctrine is applicable in this case. The State of Louisiana, acting through its Railroad Commission, is seeking to compel the railroads operating in the State to accept and transport cars which are already loaded when tendered them at proper places. And we think the requirement of the order of the Railroad Commission goes no further than to require that reasonably adequate facilities be furnished for the accommodation of traffic.

In the Detroit Switching Case, 231 U. S. 457, the Court held that the requirement that cars shall be transported from one point to another, in the city of Detroit, by the Grand Trunk Railway Company, on its terminals, was not taking of property without due process, and, on this point, says:

> "As we have determined that the tracks or terminal facilities of appellants are not taken by the order of the Commission, we need not consider a subdivision of which provides that nothing in the act shall be construed as requir-

> ing any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business."

The Commission has said no more than that all who desire to do so may receive switching service under the same terms and conditions. This is not taking property. The carrier has assumed the responsibility of permitting the use of its terminals, at reasonable rates, by its mere incorporation.

The question of discrimination in the use of facilities was the only issue before the Commission in this case.

If the carrier owes a duty, and the order of the Commission goes no further than to require the performance of that duty, there is no taking of property without due process. It is regulation of the use of the property in its broadest sense.

The duty of railroads to avoid unjust discrimination is no longer questioned. The right of the State Commission to remove such discrimination when it is found to exist, insofar as it affects the commerce of a State, is clear, and State action, having the removal of unjust discrimination as its only object, should not be disturbed because, incidentally, interstate commerce may be affected.

If the State Commission may not regulate the instruments of commerce within its borders so as to prevent unjust discrimination, it is, in effect, saying

that the carrier, not the Commission, shall determine upon the use to which its railroad and facilities may be put and the terms and conditions upon which they may be used. It resolves itself at last into the deduction that the Commission's power to regulate is limited to certain portions of a railroad and does not include the entire railroad. This contention is destroyed by the interpretation placed upon the law by both the Federal and State Courts, and it is no longer an open question that the Commission's power to regulate embraces the entire business and plant of the thing subject to its regulation. So long as the rates allowed by the Commission are reasonable the carrier cannot complain that its property is taken without due process of law. It is not in any sense unreasonable for the State Commission to require the performance of a common law duty.

IV.

There is no encroachment upon the federal exercise of power by the order of the Railroad Commission of Louisiana which prescribes a reasonable regulation in aid of commerce, and which prevents unjust discrimination in intracity switching.

The Railroad Commission of Louisiana was dealing with the relation between carriers and shippers when it adopted its Order No. 295, and, while the relationship between the carriers themselves has been

made an issue in complainant's bill, it is only an incidental result and an indirect consequence of the Commission's requirement. The laws of Louisiana have placed upon the carrier the duty of opening its line to the commerce of the State, and if in performing this duty it follows that the interstate shipper will be benefited by the Commission's ruling it is no impediment to an exercise of its authority which guarantees the free flow of commerce.

In order to successfully invoke the exclusiveness of federal control over the commerce which the State seeks to regulate, it must be shown that the State law which is attacked is in collision with the federal constitution, or an act of Congress which it is claimed excludes the State from acting. Switching of cars at junctions and at terminals is undoubtedly, in some cases, a part of the movement of the interstate as well as intrastate traffic, **but in most cases the service is performed wholly within one State and either before or after the shipment has begun or has completed its transportation.** It is only interstate commerce when performed as a part of the interstate movement on a through rate or bill of lading under tariff authority.

In Mobile County vs. Kimbal, 102 U. S. 586, 26 L. ed. 240, it is said:

> "The improvement of harbors, bays and navigable rivers within the states may be regulated by state authority, if it does not impair their free navigation as permitted under the

> laws of the United States, nor defeat any system for the improvement of their navigation provided by the federal government."

The authority for the proposition that the State may regulate a switching movement that is purely interstate, because it preceeds or follows transportation, on a separate and distinct contract and rate, is found in numerous decisions, some of them quite recently announced. In Louisville & Nashville R. Co. vs. Higdon, 234 U. S. 592, 58 L. ed. 1484, Sup. Ct. Rep. 592, the Court announces this very clear rule:

> "The State has full authority over shipments purely intrastate, and the facts set up in the second amended answer that the requirement made at Henderson might be made at other points in the state and would result in an unnecessary and unreasonable burden upon interstate commerce, only avers an indirect effect upon such commerce of the exercise of a right clearly shown within the authority of the State; and being only of that indirect and consequential character, it does not deprive the railroad company of rights secured by the commerce clause of the Constitution of the United States."

Appellant contends that the order complained of violates the Act to Regulate Commerce, Section 3.

Section 3 of the Act to Regulate Commerce provides:

> "That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreason-

able preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

"Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and **charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.**"

V.

The order of the Louisiana Commission does not require the Illinois Central Railroad Company to give the use of its terminals to its connections.

The appellant urges upon the Court, as a reason for declaring the order contested invalid, that it requires appellant to give the use of its terminals to its connecting lines, which, it is claimed, is specially provided against in Section 3 of the Act to Regulate Commerce, approved February 4, 1887. The clause invoked to support the contention is:

> "But this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

The law places all of the rairload and its appurtenances under the Commission's control. The Commission must act reasonably, but beyond that restriction its powers are not limited.

However, assuming that the argument will be made by the eminent counsel for the appellant that the order of the Louisiana Commission does require it to give its terminals to its connecting lines, and is therefore unreasonable, we say, in reply, that it is only the use of the terminals, upon the payment of adequate compensation that is sought, and that use the appellant owes, and the public can demand, by virtue of the terminals being a part of the property of a common carrier devoted to public use and benefit.

The last clause of Section 3 of the Act to Regulate Commerce is not a limitation upon state action, and there is no such provision in the laws of Louisiana. This provision of the interstate commerce act, in the case of State of Iowa vs. C., M. & St. P. R. Co., 33 Fed. 391, was declared by Judge Shiras not to be an exclusion of the authority of the state to regulate intrastate traffic, or to deal with the instrumentalities of interstate commerce.

It was urged by the defendant railroad that in requiring the case of one carrier to be switched over the tracks of another carrier in Dubuque, interstate commerce was regulated, since the cars were filled with property brought into Iowa from other states. The Court declared that the tracks of the defendant carriers in the city of Dubuque must have been there laid to be public and open to the use of the citizens.

> "Certainly it cannot be said that upon the face of it it clearly appears that by imposing this duty upon the defendant company to be paid therefor, the state is interfering with or regulating commerce between states. All that is sought to be done is to fix the rate to be charged by the defendant company for certain work which it has assumed to do, not by reason of its character as a common carrier, but as a consideration which the company agreed to do and perform for the privilege of laying down the side tracks in question. The facts averred in the record do not certainly show that the question of interstate commerce is necessarily involved in the case."

It was then urged by the defendant that the action of the Commission was in contravention of the last clause of Section 3 of the interstate commerce act as to the use of tracks for terminal facilities, but the Court declared:

> "The meaning of this clause is clear. It simply declares that the preceeding provision of the section shall not be deemed to give the right to one carrier to use the tracks or termi-

> nal facilities of another carrier in the like business. It has reference to the effect of the act of Congress, and nothing else. If the defendant company, by a contract with the city of Dubuque, has bound itself to allow other companies to use part of its tracks or terminal facilities, this clause of the act of Congress does not affect such a contract or the enforcement thereof. So, also, if the State of Iowa has provided by proper statute that different companies may have a joint or common use of certain terminal facilities, the rights of the several companies to such joint use are not affected by the provisions of the interstate commerce act, but the same must be measured and determined by the statutes of the state."

We insist, therefore, that the clause in the federal act should not be construed as a limitation upon the power of the state. The order does not contravene an express regulation of the federal government as to local interchange of traffic of the character here in question.

Indeed, the Interstate Commerce Commission, in the case of St. Louis, Springfield & Peoria Railroad, et al., vs. Peoria & Pekin Union Railway Co., 26 I. C. C. 226, views the situation relative to intracity switching as we do, as is shown by the following language:

> "The Commission has felt constrained in applying the Act to Regulate Commerce to observe the apparent inflexible requirement of this provision. To order these defendants to receive and switch cars which have beentrans-

ported to Frederick over the lines of their rivals would apparently be to require them within the meaning of the act to open their terminals to their competitors, and this is forbidden. We are therefore obliged to hold in the present case that we have no authority to grant this reasonable request of the complainants.

Let it be noted that this is not an application in any sense for the estabilshment of through routes and joint rates. If shippers upon the Frederick Railroad at points other than Frederick, or if that railroad itself were demanding the establishment of through routes and joint rates, an entirely different question would be presented, and that question is not here considered. The purpose of these complainants is simply to obtain access by a purely switching movement from their industries located upon the terminals of the Frederick Railroad to and from the Baltimore & Ohio and the Pennsylvania."

In a recent case before the Interstate Commerce Commission, the Pennsylvania Railroad Company assumed the position that this provision in the Act protected it from throwing open its terminals to the use of other railroads, and sought protection behind the shadow of the clause just quoted. The Interstate Commerce Commission discussed this question fully in its decision, in the case of Merchants & Manufacturers' Association of Baltimore, et al., vs. Pennsylvania Railroad Company, et al. (23 I. C. C. Rep. 474), from which we have taken the following excerpts:

"But if defendants are now allowing such use of their tracks or terminal facilities, the proviso of Section 3 can have no application here."

"In expounding this theory, counsel for one of the defendants stated: 'We have, by the fixing of $30 per car, done what Section 3 tells us to do—protect ourselves from our competitors.' It was explained that a low switching charge would be readily absorbed by a competing carrier possessing inadequate terminals or none at all, and the carrier owning the terminals would lose the revenue it might otherwise obtain for the line haul. It is admitted, however, that there was no distinction between the collection of charges for interchanging competitive and non-competitive traffic. Consequently, there are instances where it is not possible for the terminal road to get a line haul. But the terminals are either open or they are not; and if a carrier holds itself out as ready to permit the use of its tracks at a certain charge, the fact that such charge may be prohibitive does not mean that the terminals are not open. On the contrary, it would seem to be a potent argument for the reduction of the charges for the use of tracks or terminal facilities already extended. But it is urged that if these terminals have been opened they have been opened to the shippers on the lines of other carriers and not to the carriers themselves. If this means that the terminals are open to receive cars tendered by another carrier but not opened to the trains or locomotives of such carrier, the distinction has no application here for no such use is sought and

none could follow any order that we might issue in this proceeding."

* * * *

"That these defendants offer each to the other their respective tracks or terminals is shown by the fact that freight is actively interchanged after its arrival at Baltimore, and for this service charges are provided in tariffs published and filed both with this Commission and with the Public Service Commission of Maryland. It follows that having elected to perform this service, the charge therefor must be reasonable."

* * * *

"In considering the question of reasonableness we wish to confine ourselves to shipments arriving in Baltimore over one line consigned to a point on another line, or shipments arriving over one line and reconsigned under proper tariff authority to points on another line, **for it can readily be assumed that under the illustration taken from complainant's brief cases will arise where the interstate character of the shipment has terminated before its intracity movement begins.** The reasonableness of these charges as applied to intrastate shipments is now before the Public Service Commission of Maryland upon complaint filed by the same interests."

* * * *

"These carriers have opened these channels of interchange between their respective terminals, and, as to traffic from some territories, have provided charges which are not shown to be unreasonable for the interchange

> of service. On traffic from other territories they have fixed charges which obviously are intended to be prohibitory. This we regard as unduly discriminatory."

It will be noted that the Interstate Commerce Commission in this case confined itself to "shipments arriving in Baltimore over one line consigned to a point on another line, or shipments arriving over one line and reconsigned, under proper tariff authority, to points on another line, for it can readily be assumed that under the illustration taken from complainant's brief, cases will arise where the interstate character of the shipment has terminated before its intracity movement begins." And it is only upon such switching movements, viz., those where the intracity movement preceeds or follows the transportation, or "line haul," that the order of the Louisiana Commission operates.

In Louisville & Nashville R. Company vs. Commonwealth of Kentucky, 161 U. S. 677, 40 L. ed. 859, the Court reviewed a decree of the Court of Appeals of the State of Kentucky, in favor of the Commonwealth of Kentucky, plaintiff, against the L. & N. R. R. Company, injoining a proposed agreement for the consolidation of that railroad with certain other railroads. The consolidation was prohibited by Article 201 of the Constitution of Kentucky.

The contention was made by the Louisville & Nashville R. R. Company, plaintiff in error, that "the

assumption of a right to prohibit the consolidation of parallel and competing lines is an interference with the power of congress over interstate commerce."

Answering this contention, the Court replied:

> "It has never been supposed that the dominant power of Congress over interstate commerce took from the states the power of legislation with respect to the instruments of such commerce, so far as the legislation was within its ordinary police powers. Nearly all of the railways in the country have been constructed under state authority, and it cannot be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves, necessarily, the power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable. In the division of authority with respect to interstate railways Congress reserves to itself the superior right to control their commerce and forbid interference therewith; while to the states remains the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests."
>
> * * * *
>
> "But little need be said in answer to the final contention of the plaintiff in error, that the assumption of a right to forbid the consolidation of parallel and competing lines is an interference with the power of Congress over interstate commerce. The same remark may

be made with respect to all police regulations of interstate railways. All such regulations interfere indirectly, more or less, with commerce between the states, in the fact that they impose a burden upon the instruments of such commerce, and add something to the cost of transportation, by the expense incurred in conforming to such regulations. These are, however, like the taxes imposed upon railways and their rolling stock, which are more or less according to the policy of the state within which the roads are operated, but are still within the competency of the legislature to impose. It is otherwise, however, with respect to taxes upon their franchises and receipts from interstate commerce, which are treated as a direct burden. There are certain intimations in some of our opinions, which might perhaps lead to an inference that the police power cannot be exercised over a subject confined exclusively to Congress by the Federal Constitution. But, while this is true with respect to the commerce itself, it is not true with respect to the instruments of such commerce."

In requiring that:

> "No railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects, or any shipper, or consignee, at rates approved or established by the Commission, whether such cars are loaded or empty, or whether such cars are **to be loaded** with freight **to be shipped** out of the state, or are loaded with freight shipped into the state,"

the Railroad Commission of Louisiana simply provided a rule which prohibits a railroad in Louisiana

from refusing to perform an obligation it owes as a common carrier, and prevents any unjust discrimination in the use of a railroad's "appurtenances," or instruments of commerce.

It was but saying, in other words, what is commanded by Article 271 of the Constitution of Louisiana, in positive terms, that:

> "Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination."

VI.

The regulating power of the Railroad Commission of Louisiana extends over the carrier and all of its appurtenances.

The orders of the Railroad Commission of Louisiana have frequently been reviewed by the State and Federal Courts, and the powers of the Commission are broad enough to reach every "service" performed by a common carrier in the State of Louisiana affecting the public. It may not encroach upon Federal authority, and has not done so in this case. The duty imposed by the order in controversy is in the interest of public welfare. It goes no further than to prevent unjust discrimination.

The power of the Louisiana Railroad Commission to regulate railroads is defined by the Supreme

Court of Louisiana in broad and comprehensive terms. In one of the earliest decisions of the Supreme Court of Louisiana, concerning the powers of the Louisiana Commisison, there is an able discussion by the late Chief Justice Nicholls of the power of regulation possessed by the Commission. In this decision the Court refers in the following language, to the article of the Civil Code which defines the object for which corporations are created, and to the powers of the Commission:

> "Article 448 of our Civil Code declares the use of corporations to be to contribute, by the union and assistance of several persons, to the promotion of some object of general utility, although they be at the same time established for the advantage of those who are members of such corporations.
>
> It will be seen from this that the object and motive of the State in granting corporate rights is to promote the public welfare. The acceptance of these rights by the incorporators is in aid of that object, though their primary motive and purpose is to derive gain and profit to themselves. What is here said of 'corporate rights' applies equally to the grant of public franchises and privileges, and their acceptance."
>
> * * * *
>
> "The conflicting interests between the corporations and the State are safeguarded by the officers of the former, on the one hand, and by the Railroad Commission, on the other. The power, authority and duty of the latter are

> not limited merely to matters affecting the public safety or the public health. They extend also to matters concerning public comfort and public convenience, and in the consideration of matters of comfort and convenience the number of persons who may be concerned or interested in some particular matter at some particular point enter as important factors in determining what is proper to be done. The Commission cannot ignore the comfort and convenience of numbers of citizens on a line of travel or conveyance to base their action exclusively upon a consideration of the amount of dollars and cents which may be involved. As a matter of course, the Commission could not, even under expressly delegated powers, act arbitrarily in a manner such as to trench upon the rights of corporations secured to them by law; but, within certain limits, though their action and orders are all subject to review, they are not all subject to reversal."

In the same decision the Court says of the Commission:

> "It is an administrative board created by the State for carrying into effect the will of the State as expressed by its legislation."

In the case of Railroad Commission of Louisiana vs. Kansas City Southern Railroad Company, 111 La. 33, 35 South. 487, the Supreme Court of Louisiana gives the broadest meaning possible to the word "regulate," as contained in Article 284 of the Constitution of the State of Louisiana.

> "The word 'regulate' has a broad meaning. We think it includes the power to see to the maintenance of the main track and all its

> switches and spurs as they were at the time of taking charge, and the power to prevent any change when reasonably, in public interest, no change should be made."

In Thompson vs. Railroad Commission of Louisiana, 198 Fed. Rep. 691, the United States District Court for the Eastern District of Louisiana, in passing upon an order of the Commission fixing rates, said:

> "The Railroad Commission of Louisiana has the authority and it is its duty to establish reasonable and just rates of transportation within the confines of the State. In doing so they may adopt a mileage, or any other recognized form of schedule; **they may order the carrier to desist from giving special privileges;** and they may raise or lower existing rates as may be necessary, provided the rates adopted are reasonable and just."

In the light of these decisions there can be no question as to the Commission's authority to "regulate" the "service" of the carrier and **all of its appurtenances.** Its terminals, its switches, its sidetracks, its depots, are all appurtenances—parts of its railroad system.

It is not contended here, nor does the Commission in its order attempt to say, that a railroad company may be required to give the use of its facilities to its connecting lines **free of charge, or at rates which would be unreasonably low.** There is no attempt to fix the rates. This has been left to the car-

riers, although it may be stated here that if the Commission may regulate the service of the terminals, it may also prescribe reasonable rates for their use. Should the carriers publish switching rates which are unreasonable, the Commission has power and authority to hear complaints against such rates, and to fix reasonable rates. If the rates it fixes are confiscatory, the carrier can appeal to the courts. There is ample remedy provided by the laws of Louisiana against an unreasonable or arbitrary exercise of power by the Louisiana Commission. The articles of the Constitution of Louisiana safeguarding the rights of carriers against injury which may result from the adoption by the Commission of an unreasonable order are:

> Art. 285. If any railroad, express, telephone, telegraph, steamboat and other water craft, or sleeping car company, or other party in interest, be dissatisfied with the decision or fixing of any rate, classification, rule, charge, order, act or regulation, adopted by the Commission, such party may file a petition setting forth the cause of objection to such decision, act, rule, rate, charge, classification or order, or to either or to all of them, in a court of competent jurisdiction, at the domicile of the Commission, against said Commission as defendant, and either party to said action may appeal the case to the Supreme Court of the State, without regard to the amount involved, and all such cases, both in the trial and appellate courts, shall be tried summarily, and

by preference over all other cases. Such cases may be tried in the court of the first instance either in chambers, or at term time; provided, all such appeals shall be returned to the Supreme Court within ten days after the decision of the lower court; and where the Commission appeals, no bond shall be required. No bond, advanced costs or security for costs shall be required of said Commission in any case.

Art. 286. If any railroad, express, telephone, telegraph, steamboat, or other water craft, or sleeping car company, subject hereto, directly or indirectly, or by any special rate, rebate, or any other device, shall intentionally charge, demand, collect, or receive from any person, firm or corporation, a greater or less compensation for any service rendered by it, than it charges, demands or receives from any other person, firm or corporation, for doing a like and contemporaneous service, or shall violate any of the rates, charges, orders, rules or decisions of said Commission, such railroad, or steamboat, or other water craft, express, telegraph, telephone, or sleeping car company, shall forfeit and pay to the State not less than One Hundred Dollars nor more than Five Thousand Dollars, to be recovered before any court of competent jurisdiction, at the suit of the State, at the domicile of the Commission.

Provided, that every order or decision of the Commission fixing and establishing a rate or charge for the transportation of passengers or freight, or for the transmission of messages or conversations by telephone or telegraph, within the State shall go into effect at such time as may be fixed by the Commission and shall remain in effect and be complied with,

unless and until set aside by the Commission, or by final judgment of a court of competent jurisdiction, rendered on final trial in a suit to set aside and annul the same.

Provided, that, whenever any rate, charge, rule, regulations, order or decision of the Commission is contested in court, as provided by this Constitution, or by any amendment thereto, and the same is maintained on final trial by a court of competent jurisdiction, the railroad, express, telephone, telegraph, steamboat or other water craft, or sleeping car company, or corporation contesting the same, shall forfeit and pay to the State of Louisiana the sum of not less than Ten ($10.00) Dollars, nor more than Fifty ($50.00) Dollars per day, for each day that the putting into effect and operation of the rate, order, charge, rule, regulation, or decision of the Commission may have been suspended by such suit, to be found and adjudged by the court in which such suit may be brought; and in all such cases the said court shall, in its judgment, maintaining said rate, charge, rule, regulation, order or decision, enter up a decree and judgment against the plaintiff therein, condemning such plaintiff to pay to the State of Louisiana the amount of the said penalty of forfeiture so found and adjudged by it, which amount, after deducting therefrom the attorney's fees provided by this Constitution, shall, when collected, be paid into the State Treasury for account of the General School Fund of the State. The power and authority of the Commission shall affect and include not only the transportation of passengers, freight, express matter, and telegraph and telephone messages between points with-

> in the State, and the use of such instruments within the State, but shall also affect and include all matters and things connected with and concerning the service to be given by railroad, express, telephone, telegraph, steamboat and other water craft, and sleeping car companies, and corporations in the State, and their operations within the State.

The Supreme Court of the United States has likewise held that the power of the State to regulate railroads extends to securing to the public reasonable facilities for making connections between different carriers.

Atlantic C. L. R. Co. vs. North Carolina Corp. Com., 206 U. S. 1, 51 L. ed. 933.

The Court in this case, speaking of the power of the North Carolina Corporation Commission to require an extra train to be run on the Atlantic Coast Line in order to make a connection with the Southern Railway Company at Selma, says:

> "This reduces itself to the contention that, although the governmental power to regulate exists in the interest of the public, yet it does not extend to securing to the public reasonable facilities for making connection between different carriers. But the proposition destroys itself, since at one and the same time it admits the plenary power to regulate and yet virtually denies the efficiency of that authority. That power, as we have seen, takes its origin from the quasi-public nature of the business in which the carrier is engaged, and embraces that business in its entirety; which,

> of course, includes the duty to require carriers to make reasonable connections with other roads, so as to promote the convenience of the traveling public."

It is true that in this case there was no question of using the terminals of a carrier, but we see in it a principle which cannot be overlooked here, namely, that the power of regulation by the State extends over the entire business of a common carrier, within its proper sphere.

As was said by the Interstate Commerce Commission in the case of Merchants & Manufacturers' Association vs. Pennsylvania Railroad Company (23 I. C. C. 474):

> "But terminals are either open or they are not; and if a carrier holds itself out as ready to permit the use of its tracks at a certain charge the fact that such charge may be prohibitive does not mean that the terminals are not open."

The fact that the complainant does allow the use of its terminals in New Orleans and at other points under certain conditions and at certain charges fixed by the carrier settles beyond dispute the fact that these terminals are open. Being open the Commission has the power to regulate their use. This is as far as the order goes.

> "The elementary proposition, that railroads, from the public nature of the business by them carried on and the interest which the

public has in their operation, are subject, as to their state business, to state regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end, is not and could not be successfully questioned, in view of the long line of authorities sustaining that doctrine."

Atlantic Coast Line R. Co. vs. North Carolina Corp. Com., 206 U. S. 1, 51 L. ed. 933.

VII.

When a railroad company declines to switch for its connections, or for shippers, between points on its terminals, on equal terms, at reasonable rates, it unjustly discriminates.

It is a matter well within the knowledge of this Court that switching of cars, in order that they may be properly placed for loading or unloading, is absolutely demanded by modern commerce. A shipper receives a carload of freight at a depot of one railroad, pays the freight bill, and accepts the shipment. It passes into his possession. He may unload on the company public team track, or have the car switched to a more convenient point. If left in the cars of the original terminal carrier, demurrage accrues after a certain reasonable delay allowed for unloading. The carrier's responsibility as a carrier has terminated and it holds the freight as a warehouseman. The owner may desire to have the shipment

transferred to a warehouse located on another railroad, with the same city. If the connecting railroad refuses to switch the shipment within the city, within the prescribed switching limits, then his only alternative is to hire teams and haul the freight to its new destination. If he were forced to do this, the facilities which the carrier possesses, and has constructed upon property acquired by the exercise of the right of eminent domain, or by franchise, are not subjected to public use, and the carrier necessarily discriminates by switching for railroads of its choice, in the same city, and refusing to switch for others. The shipper is unable to use all of the railroad's facilities and is thereby inconvenienced and discriminated against by the carrier.

The reverse of this proposition is where a shipper desires to load a car at his place of business on one railroad to be shipped to a point on another railroad. If there is no through rate from the point of loading, the car must be switched to a shipping point before it can begin its journey, and the carrier, in order to perform properly its service to the shipper, must switch the car at a reasonable rate to the connecting line. The shipper pays merely a switching charge for the switching service, and the bill of lading is taken out after the car reaches the point on the connecting line from which it is to be shipped. When a carrier has issued and published tariffs con-

taining through rates with provisions for delivering at terminals, the switching service is included in the through rate. It is absorbed by the carrier performing the line haul. Such through traffic, moving at established rates, is not disturbed by the requirement that "no railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects, whether such cars are loaded or empty, or whether such cars are to be loaded with freight to be shipped out of the state, or are loaded with freight shipped into the state."

In either case, the service is a commercial necessity. It cannot be successfully contended that the State can offer no remedy in a case where the carrier refuses to perform switching, or consents to do so only at an exorbitant rate, and for those of its own choosing. The fact that the car to be switched, after delivery and payment of freight charges, is loaded with freight shipped into the State, or is **to be loaded** with freight **to be shipped** out of the State, does not give to the shipment the character of interstate commerce.

In one case the shipment has reached its destination when it arrives at the depot to which it is consigned. The switching service is performed under a separate contract, and takes the place of a wagon or team haul which the shipper or consignee would per-

form if there were no tracks over which the car could be hauled. The freight passes into the possession of the consignee as soon as the freight charges are paid, and it is no concern of the carrier transporting it to its depot at destination what is done with it. The freight may be sold and delivered to anyone at New Orleans, or reshipped. If switched, the switching charge is in addition to the transportation charge. If reshipped to a point in the State outside of switching limits on a connecting line, another transportation charge is paid, in addition to the switching charge.

VIII.

The order of the Railroad Commission of Louisiana, being in aid of commerce, does not come into conflict with the Act to Regulate Commerce.

The order is in perfect harmony with the Act to Regulate Commerce; and, while it preceded the decision of the Interstate Commerce Commission in the case of Merchants & Manufacturers' Association of Baltimore vs. Pennsylvania R. R. Co., 23 I. C. C. 474, that decision emphasizes the wisdom and necessity of the State Railroad Commission's order.

Where the switching service is included in the through rate, the Interstate Commerce Commission controls the situation, for there the switching is done without any additional cost as part of the through service. The carriers, by tariff authority, absorb the switching charges.

But when the transportation is preceded or followed by a switching service, the charge for which is not included in the through rate, and which would not have been performed under the contract of carriage, then such switching is an etxra service, performed under a new contract, and has no relation to the movement of the shipment from station to station, in a "line haul." Delivery is complete when the shipment reaches the point to which it is consigned, and is there surrendered, on the payment of freight charges, to the owner.

There will ever be cases where the powers of state and nation run close together. When the powers of state and nation are exerted in harmony, and not in conflict, and the result of the exertion of the power vested in one is to aid in the ends for which the other exists, there can be no grounds for saying that one is an interference with the other. A regulation in aid of interstate and intrastate commerce is not an interference with interstate commerce.

As said before, the service over which Congress has exercised its power by placing it under control of the Interstate Commerce Commission's jurisdiction is that which is given by a common carrier and its connections in the transportation of freight on through rates, between points on the originating railroad and points on its connecting lines, or at terminal points. One rate covers the entire movement, including

switching, to industry tracks on connecting lines. In such cases through rates are provided, and, when so provided, arrangements have been previously made to deliver the freight at the designated point on the terminal. There the intracity or intrastate movement is contemplated as a part of the original shipment, at the time the shipment is made. It is not a separate and distinct transaction. It forms a continuous service under a contract of carriage from point of origin to point of destination. But there are cases within the regulating power of the State Commission where the intracity or intrastate movement begins and is ended after or before the interstate journey is completed. Such cases are those covered by the Commission's rule here in contest.

The Supreme Court of the United States recently, in the case of Hampton, et al., vs. the St. L., Iron Mountain & Sou. Railway Company, 227 U. S. 456, reviewed a decree of the United States Circuit Court for the Eastern District of Arkansas, enjoining the bringing of actions against an interstate railway carrier for the penalties incurred for a refusal to furnish cars for intrastate transportation as required by a state statute. The decree was reversed and the case remanded, with instructions to dismiss the bill. The statute under which the penalties were sought to be inflicted is set forth in the margin of the opinion and is in part as follows:

> "That when a shipper makes a written application to the station agent of a railroad company for a car or cars, to be loaded with any kind of freight embraced in the tariff of said company, stating in said application the character of the freight, and its final destination, the railroad company shall furnish same at the place of shipment within six days from 7 o'clock a. m. the day following such application."
>
> * * * *
>
> "Interstate railroads shall furnish cars on application for interstate shipments, the same in all respects as other cars to be furnished by intrastate railroads under the provisions of this act."

The attack made upon the statute was based upon two propositions, the first being:

> "That the clause of the 7th section, set out above, manifests the intention that the act shall apply as well to interstate shipments as to intrastate shipments, and that this purpose invalidates the whole act, as there is nothing to justify the court in saying that the valid parts of the act would have been passed without the invalid parts."

It is only the first grounds urged that have a bearing on this case, and the same grounds are urged against the Louisiana Commission's rule here in contest. The decision of the Supreme Court is specially pertinent here, since the rules are in many respects similar in their requirements.

Discussing the first objection urged to the Arkansas statute, the Court says:

> "That clause probably means no more than that there shall be no discrimination against demands for cars for interstate shipments. If, however, it is construed as extending the act so as to regulate the furnishing of cars for interstate shipments, it would be invalid by reason of the provisions of the Hepburn amendment to the Act to Regulate Commerce of June 29, 1906 (34 Stat. at L. 584, Chap. 3591, U. S. Comp. Stat. Supp. 1911, p. 1288); Chicago, R. I. & B. R. Co. vs. Hardwick Farmers' Elevator Company, 226 U. S., ante, 174, 33 Sup. Ct. Rep. 174.
>
> The effect of this upon the remainder of the act has not been consideerd on the briefs of the appellee, further than to say that in Oliver vs. Chicago, R. I. & P. Co., 89 Ark. 466, 117 S. W. 238, decided pending this appeal, the Supreme Court of the State has held the act valid as including an elaborate and workable scheme for the regulation of intrastate railroad traffic, irrespective of the invalidity of the clause referred to. We shall therefore assume the remainder of the act to be valid, although the clause in question be regarded as invalid."

Should the Court determine that the order of the Railroad Commission of Louisiana is invalid, insofar as it requires that railroads in Louisiana shall not refuse or decline to switch cars for its connections, or for shippers or consignees, at reasonable rates,

> "whether such cars are to be loaded with freight to be shipped out of the state, or are loaded with freight shipped into the state,"

is invalid, the remainder of the order should be held practicable as a "workable scheme for the regulation of intrastate railroad traffic," irrespective of the clause referred to.

The order provides:

a. "No railroad company operating in the State of Louisiana shall decline or refuse to switch cars for any other railroad with which it connects, or any shipper, or consignee, at rates approved or established by the Commission,

b. whether such cars are loaded or empty,

c. or whether such cars are to be loaded with freight to be shipped out of the state or are loaded with freight shipped into the state.

d. All tariffs for the 'service' of switching cars in the State of Louisiana shall be filed with the Commission, within thirty days from the date of this order, and all the Commission's rules and orders, relative to rates and changes in rates, will apply to switching charges."

The last paragraph of the order requires that tariffs covering "the service of switching in the State of Louisiana" be filed with the Commission. The 7th agreed statement of fact (Td. 16) admits that copies of tariffs containing the charges for such switching service are on file with the Railroad Commission of Louisiana and with the Interstate Commerce Commission. So that, under the admission in

the 7th agreed statement of fact, the order has been complied with insofar as the filing of tariffs is concerned. The order requires the railroad to do what its tariff says it will do, without discrimination.

The 8th agreed statement of fact is:

> "That there are switch movements between points within the city of New Orleans, as set forth in admission No. 6 hereof, one or both of which may be located upon the terminals of the Illinois Central Railroad Company, upon which there is a switching charge varying according to distance, and in addition to which switching charge there is a charge of $3.00 per car for car rental; that these switch movements are entirely within the switching limits of the city of New Orleans and are made on orders of consignees under the circumstances stated in No. Sixth hereof; that said charges are shown on tariffs filed with and approved by the Interstate Commerce Commission, and with the Railroad Commission of Louisiana."

Just what the Interstate Commerce Commission has to do with such switch movements, we cannot apprehend. They are admittedly movements between points within the city of New Orleans, where there has been no previous transportation. They come plainly within the regulation power of the State Commission. It is admitted the circumstances under which such movements are made are the same as stated in the sixth admission, and the sixth admission (Tr. 16) states that the switch movement is always performed by first notifying the consignee that the

freight is ready for delivery at depot or warehouse of the company, and after the consignee calls and pays the freight bill and gives a switching order to the agent of the railroad company transporting the shipment to New Orleans, to have the car switched and placed on the terminal tracks, or on some of the industrial tracks connected with the terminal tracks, in the city of New Orleans, for delivery. Before he can secure the switching service he must

a. Be notified that the shipment is ready for delivery at the depot or warehouse of the company.

b. Pay the freight bill.

c. Give a switching order to the agent of the railroad company transporting the shipment to New Orleans, to have the car switched.

When the original carrier undertakes to transport freight to New Orleans, its obligation is fulfilled when the freight reaches its depot or freight yards, and the consignee, having taken possession of the goods in the car in which they are shipped makes another contract with another carrier to deliver the freight at another destination. The consignee may deliver the freight, on the switching order of the warehouse, or to someone else to whom it may be sold, after it reaches the depot of the original terminal company, and before the switch movement begins.

Plaintiff argues that Congress has placed its terminals exclusively under the jurisdiction of the Interstate Commerce Commission, and thus ousted the state's power to regulate the traffic which passes over such terminals, even though it admits that there are shipments made between points on such terminals that never enter into interstate commerce, and that there are switching movements made after the completion of the interstate shipment or before it begins.

This contention was urged in the Detroit Switching Case (231 U. S. 457), and the Court dismissed it, saying:

> "We will not dwell on the contention of appellants that Congress has taken over the whole subject of terminals, team tracks, switching tracks, sidings, etc. We need make no other comment than that it cannot be asserted as a matter of law that Congress has done so; and where the accommodation between intrastate and interstate commerce shall be made, we are not called upon to say on this record." (466.)

IX.

The Railroad Commission's order prevents unjust discrimination in the switching of cars.

Order No. 295 of the Railroad Commission seeks to require absolute fairness between shippers, consignees, and connecting carriers in the use of the facilities of commerce. It means no more than that

there shall be no discrimination between intrastate and interstate shippers in the furnishing and placing of cars. The Commission has not fixed any rates for the service of switching cars at terminals or junction points. The carrier is left to establish reasonable rates for such service, in the first instance. The order of the Commission can only cover those cases where the service performed is exclusive of an interstate rate, and either precedes the beginning of, or follows the termination of, an interstate shipment.

X.

Appellant has opened its terminals and switches cars between points in the city of New Orleans for some. It should not be allowed to deny similar service to all who apply.

Plaintiffs contend in their bill that the order of the Railroad Commission will compel it, against its will, and at a small switching charge, to allow other railroad companies the use of its yards, switches, and terminal facilities, and thus employ its properties to extend the terminals of other railroads in the city of New Orleans.

Our reply to this is that the plaintiff has opened and offered its terminals to public use by the publication and filing of tariffs both with the Interstate Commerce Commission and with the State Railroad Commission, and it therefore cannot contend that the

public has not the right to use these terminals without discrimination. This allegation in plaintiff's bill goes rather to the reasonableness of rates than to the use of its terminals without discrimination, and the reasonableness of rates is not at issue in this suit. We assert, as an elementary proposition, that the terminals and switches are a part of the railroad system and the public has the right to use them on equal and reasonable terms.

In the case of State ex rel. Cumberland Tel. & Tel. Co. vs. Texas & Pacific, 52 La. Ann. 1850, 28 South. 284, the Supreme Court of Louisiana had under review a case where the Cumberland Telephone Company was seeking by mandamus to compel the Texas & Pacific Railway Company to perform for it a service of distributing telephone poles at points between stations on its line. The service was being performed for the Western Union Telegraph Company, a rival of the Cumberland. Discrimination was alleged by the relator. A writ of mandamus, compelling the performance of the service for all, under similar conditions, was issued by the lower court, and the decree affirmed on appeal. In discussing the duties of common carriers, the Court said:

> "The rule applying has made it the specific duty of carriers to serve all alike. Favors and preferences are to be avoided. A common carrier cannot carry for one and refuse to carry for another. A railway is without right to

grant privileges where the public is concerned. 'If the company possessed this right, it might build up one set of men and destroy others, advance one kind of business and break down another, and make even religion or politics the test in the distribution of its favors,' (quoted form Sandford vs. Railroad Co., 24 Pa. St. 382, in Chicago & N. W. R. Co. vs. People, 8 Am. Rep. 690, in which the court maintained a writ of mandamus compelling the company to perform the service requested). "The business of the common carrier is for the public, and it is his duty to serve the public indifferently. He is entitled to a reasonable compensation; but, on payment of this, he is bound to carry for whomsoever will employ him to the extent of his ability." Messenger vs. Railroad Co., 18 Am. Rep. 756. The services to be rendered by a common carrier exclude the right to give special preference. Id., 37 N. J. Law, 531, citing New England Exp. Co. vs. Maine Cent. R. Co., 57 Me. 196.

This brings us to the objection urged by the defendant in support of the assignment of error arising from the asserted attempt to take away a valuable right of property vested in appellant without due process of law. It being the duty of the appellant not to discriminate in its service to the public, and to serve all impartially, a decree requiring service without discrimination is not the taking away of a valuable right of property, but is the enforcement of a duty. Under the laws as we take them, the appellant is expected to give good reasons for not serving one who offers to pay any reasonable amount required for the service. We have not found good reasons for

its refusing to serve relator. It is not proposed to interfere in any manner with the traffic or other business of the company. From this point of view there is no interference with the right of property. It is not an arbitrary exercise of the powers of government. It is due process of law."

In denying an application for rehearing the court announced:

"That it is the province of the court to say to this common carrier, 'What you do for others you cannot refuse to relator,' cannot, we think, be seriously questioned, and in so saying and enforcing by its writs the performance of the duty, it is not apparent that defendant company is denied any of the rights, privileges, and immunities granted to it by the several acts of Congress referred to in the application for rehearing and in the briefs filed on its behalf."

XI.

Cases Discussed.

THE DETROIT SWITCHING CASE.

A petition was filed with the Michigan Railroad Commission complaining that certain rates which had been filed by the Grand Trunk Railroad Company were unreasonable and exorbitant. After the filing of this complaint the Grand Trunk system by a supplement to the tariff complained of, suspended the intrastate rates named in its tariff and published another tariff cancelling all rates between industries

and private sidings on the system and hauled on team tracks on that system, and all rates between junction points with other carriers within the corporate limits of Detroit, and the team tracks of the system. The effect of this tariff was to withdraw all intrastate and interstate switching movements, except as to the Detroit & Toledo Shore Line, with which the Grand Trunk was under contract for team switching. The Michigan Commission suspended this tariff, whereupon the bill of the Grand Trunk Railway was filed.

It was contended that the order of the Michigan Railroad Commission was an interference with interstate commerce. The Court dismissed this contention, saying:

> "It is contended that the order is an interference with interstate commerce. The contention is premature, if not without foundation. Section 7, before its amendment, required all railroads subject to it to establish switching connections between one another and to establish depots and otherwise, for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of property and passengers to and from their several lines and those connecting therewith. And also for the transfer and delivery of cars without unreasonable delay or discrimination at any point on their own lines, or on any connecting line, and forbidding discrimination in rates and charges. And the respective companies were required to draw over their roads the merchandise and

cars of any other corporation or individual having tracks, when the cars are of proper gauge, equipment and properly loaded. Power was given to the Commission, if the compensation could not be agreed upon by the roads, to fix such compensation. In other words, the duty of investigation was imposed on the Commission and the duty to render such charge as was suitable to the situation, and to award compensation to the carriers for any service required of them.

We have seen from the statement of facts that the first concern of the Grand Trunk was the right to charge what it pleased or discriminate between the services. Inconvenience to its interstate business seems to be an afterthought. Besides, the fact of inconvenience is disputed. It is charged, it is true, in an affidavit filed by appellants; but there was a counter affidavit, and it was averred that the interchange of traffic required by the legislature of the state did not impede interstate business, but, on the contrary, facilitated it and intrastate commerce, and relieved, not caused, congestion on the tracks of the various railroads in the city. And, as we have seen, the order of the Commission was suspensory only of the tariff of the appellants, not a final determinal against it, or of the conditions which might or might not justify it. It is too late in the day to question the competency of a state to create a commission and to give it the power of regulating railroads, and necessarily of investigating the conditions upon which regulation may be directed. If a judicial interference is sought with the exercise of such power, it must be clearly shown to

> have been transcended, not left as a conclusion from the balancing of conflicting affidavits, or even, it may be, as held by the District Court, on ex parte affidavits. Courts are reluctant to interfere with the laws of a state or with the tribunals constituted to enforce them. Doubts will not be resolved against the law, nor the decision of its tribunals prevented or anticipated unless the necessity for either be demonstrated. Upon these principals the District Court acted, and rightly acted."
>
> Grand Trunk Ry. Co. vs. Michigan Railroad Commission, 231 U. S. 457.

THE WAVERLY CASE (I. C. C.).

Appellant relies upon the case of Waverly Oil Works Company vs. Pennsylvania Railroad Co., et al., 28 I. C. C. 621, in support of the proposition that it cannot be required to switch for its connections at a switching rate. The Interstate Commerce Commission, in this decision did not consider the question of interswitching at terminals. The opinion says:

> "What the Commission is really asked to do is to reduce the charge for switching carloads of freight to and from industries upon the lines of the Pennsylvania to other railroads entering Pittsburg. The purpose of the complainant is to so force down the switching charge that other lines will absorb these charges and thereby give to Pittsburg and to industries located there the **benefit of free** switching" (p. 623).

The Court will readily observe that there is no similarity between the question considered by the Interstate Commerce Commission in the Waverly Case and the order of the Railroad Commission of Louisiana. Indeed, Commissioner McChord, in a concurring opinion, says:

> "The broad question of interswitching at terminals was not presented, and I do not believe that the decision rightly can be given the interpretation which is accorded it by the majority opinion. My opinion in this regard seems fortified by the decision of the Supreme Court in Grand Trunk Railway Company of Canada vs. Michigan Railroad Commission, 23 U. S. 452, to which my attention has just been called and which was delivered December 8, 1913" (28 I. C. C. 632).

There have been but few cases involving switching service before the courts.

In Dixon vs. Central of Ga., 110 Ga. 173, 35 S. E. 369, the distinction between transportation and switching is thus stated:

> "The test of distinction between transportation service relatively to loaded freight cars, for which a railway company can lawfully charge tonnage rates, and switching or transfer service, for which it is restricted to a fixed charge per car, is not whether the movement of the cars involves the use of a portion of the company's main line, or that of another; for there may be a transportation service over one or more spur tracks of the same company, if the contract of affreightment requires move-

ments over other tracks or lines of railway; whereas, **a switching or transfer service is one which precedes or follows a transportation service and applies only to a shipment on which the legal freight charges have already been earned or are to be earned.**"

McNEIL VS. SOUTHERN.

It is contended in the plaintiff's brief by its able counsel that the case of McNeil vs. Southern Railway Company, 202 U. S. 543, 50 L. ed. 1142, is decisive of the point that the order in contest is a regulation of interstate commerce and not within the control of the Louisiana Commission.

The North Carolina Commission was attempting to require the Southern Railway Company to deliver cars beyond its right-of-way to a private siding without additional compensation. In the case now before the court the Louisiana Commission is only attempting to require that switching shall be done without discrimination by railroad companies whose terminal facilities are open to the public by the filing of tariffs, on the payment of established tariff rates. In the North Carolina case just cited the Court refused to question "the right of the state of North Carolina, in the exercise of its police authority, to confer upon an administrative agency the power to make many reasonable regulations concerning the place, manner and time of delivery of merchandise moving in the channels of interstate commerce." (202 U. S. 543 (561).

It was held, however, that "any regulation of such subject made by the state, or under its authority, which directly burdens interstate commerce is a regulation of such comemrce and repugnant to the Constitution of the United States." We repeat, the order of the Louisiana Railroad Commission does not directly burden, but is in aid of interstate commerce.

The Court merely held that in the particular case before it the order by which the carrier was required to deliver cars containing interstate shipments beyond its right-of-way to a private siding was an unlawful interference with interstate commerce.

There is no such requirement in the order of the Louisiana Commission. There was no prior delivery of the freight in the North Carolina case. A notice was given to the consignee that the shipments were at the depot awaiting delivery. The consignee declined to receive and unload the cars at that point. The North Carolina Commission then issued an order requiring the company, upon the payment of the freight charges by the consignee, to make delivery of the cars beyond its right-of-way and on a private industrial track, as referred to, without additional compensation. Interstate transportation had not been completed in the North Carolina case, whereas delivery must have been made before the order of the Louisiana Commission begins to operate, on cars

reaching New Orleans over one of the railroads connecting with the Illinois Central. The local switching service constitutes no part of the through service and is performed for additional charge under a new contract. In the North Carolina case there was no additional contract and no additional charge contemplated. The cases are widely dissimilar.

LARABEE FLOUR MILLS CASE.

The Supreme Court of the United States, in the case of Missouri Pacific Railway Company vs. Larabee Flour Mills Company, 211 U. S. 612, 53 L. ed. 352, 29 Sup. Ct. Rep. 214, held that a common carrier is bound to treat all shippers alike and can be compelled to do so by mandamus or other proper writ, irrespective of legislative action or special mandate from any commission or other administrative board. In the Larabee case the duty which was enforced in the state court by mandamus was the duty of a railroad company engaged in interstate commerce to afford equal local switching to its shippers, notwithstanding the cars concerning which the service was claimed were eventually to be engaged in interstate commerce. In this case the Missouri Pacific had engaged in the business of transporting cars from the Santa Fe track to industries located at Stafford, and continued to do so for all parties except the mill company. Mr. Justice Brewer, delivering the opinion of the Court, says:

> "So long as it engaged in such transfer it was bound to treat all industries at Stafford alike, and cannot refuse to do for one that which it was doing for others. No legislative enactment, no special mandate from any commission or other administrative body, was necessary, for the duty arose from the fact that it was a common carrier. This lies at the foundation of the law of common carriers. Wherever one engages in that business the obligation of equal service to all arises; and that obligation, irrespective of legislative action or special mandate, can be enforced by the courts."

In the statement of facts, prepared by Mr. Justice Brewer, it is said (p. 614):

> "The mill company has, for more than four years, been operating a flour mill of 1,000 barrels daily capacity. About three-fifths of its product is shipped out of the state of Kansas into other states, and the remaining two-fifths to points within the state. It receives a large portion of its grain in carload lots over the two roads." (Santa Fe & Mo. P. Ry.)

The contention of the carriers in the Larabee case was that they were common carriers engaged in interstate commerce, and as such were subject to the control of Congress and, therefore, in these respects not amenable to the power of the state.

The Larabee case is differentiated by the Court from the case of McNeill vs. Southern Railway Company, 202 U. S. 543, and squarely meets the argu-

ment presented on behalf of the appellant in the following language:

> "On the other hand, it is said that Congress has already acted—has created the Interstate Commerce Commission, and given to it a large measure of control over interstate commerce. But the fact that Congress has intrusted power to that Commission does not, in the absence of action by it, change the rule which existed prior to the creation of the Commission. Congress could always regulate interstate commerce, and could make specific provisions in reference thereto, and yet this has not been held to interfere with the power of the state in these incidental matters. A mere delegation by Congress to the Commission of a like power has no greater effect, and does not of itself disturb the authority of the state. It is not contended that the Commission has taken any action in respect to the particular matters involved. It may never do so, and no one can, in advance, anticipate what it will do when it acts. Until then the authority of the state in merely incidental matters remains undisturbed. In other words, the mere grant by Congress to the Commission of certain national powers in respect to interstate commerce does not of itself, and in the absence of action by the Commission, interfere with the authority of the state to make those regulations conducive to the welfare and convenience of its citizens. Running through the entire argument of counsel for the Missouri Pacific is the thought that the control of Congress over interstate commerce and a delegation of that control to a commission, necessarily withdraws from the state all power in respect to regula-

tions of a local character. This proposition cannot be sustained. Until specific action by Congress or the Commission, the control of the state over these incidental matters remains undisturbed. But it is further contended that this is not a mere incidental matter, indirectly affecting the interstate commerce, but directly a part of such commerce, and therefore beyond the power of the state to control; and, in support of that, McNeil vs. Southern R. Co., 202 U. S. 543, 57 L. ed. 1142, 26 Sup. Ct. Rep. 722, is referred to. There are many points of resemblance between that case and this, but there is this substantial distinction: In that was presented and determined solely the power of a state commission to make orders respecting the delivery of cars engaged in interstate commerce beyond the right-of-way of the carrier and to a private siding—an order which affected the movement of the cars prior to the completion of the transportation; while here is presented, as heretofore indicated, the question of the power of the state to prevent discrimination between shippers, and the common law duty resting upon a carrier was enforced. This common law duty the state, in a case like the present, may—at least, in the absence of congressional action—compel a carrier to discharge."

NEW YORK, EX REL, PENNSYLVANIA R. CO. VS. KNIGHT.

In the case of New York, ex rel, Pennsylvania R. Co. vs. Knight, 192 U. S. 27, 48 L. ed. 327, the Court held that a franchise tax imposed under appropriate statutes of the state of New York upon

the Pennsylvania Railroad Company for carrying on a cab service wholly within the state, for the purpose of conveying its passengers to and from its ferry landing in New York city, the charges for which are entirely separate from those for other transportation, is not an unconstitutional burden on interstate commerce, but is a tax upon an independent local service preliminary or subsequent to any interstate transportation.

In the opinion, delivered by Mr. Justice Brewer, the following language is used:

> "Whenever a separation in fact exists between transportation service wholly within the state and that between the states, a like separation may be recognized between the control of the state and that of the nation. Osborne vs. Florida, 164 U. S. 650, 41 L. ed. 586, 17 Sup. Ct. Rep. 214; Pullman Co. vs. Adams, 189 U. S. 420, 47 L. ed. 877, 23 Sup. Ct. Rep. 494.
>
> As we have seen, the cab service is rendered wholly within the state, and has no contractual or necessary relation to interstate transportation. It is either preliminary or subsequent to, and not necessarily connected therewith. But when service is wholly within a state, it is presumably subject to state control. The burden is on him who asserts that, though actually within, it is legally outside, the state; and unless the interstate character is established, locality determines the question of jurisdiction."

The situation relative to the switching service affected by the order of the Louisiana Commission could not well be more precisely stated.

BROWN VS. HOUSTON.

In the case of Brown vs. Houston, 114 U. S. 622, 29 L. ed. 257, 5 Sup. Ct. Rep. 1091, the property (coal in barges) had reached the state, but was yet in the boats in which it had been brought into the state. While on the barges it was offered for sale. It was held that it had become part of the property of the state and was subject to taxation.

In Pittsburg & Sou. Coal Company vs. Bates, 156 U. S. 577, 39 L. ed. 538, 5 Int. St. Com. Rep. 30, 15 Sup. Ct. Rep. 415, the facts were similar to those in the case of Brown vs. Houston, and it was affirmed on the authority of that case. In both of these cases the question involved was the validity of a local tax on coal in barges shipped from the mines in Pennsylvania to New Orleans, Louisiana. The coal in the Brown vs. Houston case had reached its destination but had not been unloaded from the barges. In the case of Pittsburg, etc., vs. Bates it had not reached its exact destination, but was moored in the Mississippi River at a convenient mooring place about nine miles above the port of Baton Rouge.

COE VS. ERROL.

In the celebrated case of Coe vs. Errol, 116 U. S. 517, 29 L. ed. 715, the Supreme Court of the United States held that exportation is not begun until the goods are committed to a common carrier for transportation out of the state to the state of their destination, or until they have started on their **ultimate passage** to that state.

The Court says:

> "What we have already said, however, in relation to the products of a state intended for transportation to another state will indicate the view which seems to us the sound one on that subject—namely, that such goods do not cease to be part of the general mass of property in the state, subject, as such, to its jurisdiction and to taxation in the usual way, until they have been shipped or entered with a common carrier for transportation to another state or have been started upon such transportation in a continuous route or journey. We think that this must be the true rule on the subject. * * * * It is true it was said in the case of the Daniel Ball, 10 Wall. 565 (77 U. S. bk. 19, L. ed. 1002): 'Whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced.' But this movement does not begin until the articles have been shipped or started for transportation from the one state to the other. The carrying of them in carts or other vehicles or even floating them to the depot where the journey is to commence is no part of that journey

> That is all preliminary work performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another state, or committed to a common carrier for transportation to such state, its destination is not fixed and cerain. It may be sold or otherwise disposed of within the state, and never put in course of transportation out of the state. Carrying it from the farm or the forest to the depot is only an interior movement of the property, entirely within the state, for the purpose, it is true, but only for the purpose, of putting it into a course of exportation; it is no part of the exportation itself. Until shipped or started on its final journey out of the state, its exportation is a matter altogether in fieri, and not at all a fixed and certain thing."

THE DIAMOND MATCH CASE.

In Diamond Match Co. vs. Ontonagon, 188 U. S. 82, 47 L. ed. 394, Coe vs. Errol, supra., is cited and its doctrine supported, in the following terms:

> "In further specialization of these propositions we may say that the cases establish that there may be an interior movement of property which does not constitute interstate commerce, though property come from or be destined to another state. In the one case, though it have not reached its place of disembarkation or delivery, it may be taxed. 114 U. S. 662, 29 L. ed. 257, 5 Sup. Ct. Rep. 1091. In the other case, until it be shipped or started on its final journey, it may be taxed. 116 U. S. 517, 29 L. ed. 715, 6 Sup. Ct. Rep. 475."

The service which is covered by the through rate applicable to a car moving in interstate commerce to New Orleans, Louisiana, does not include delivery to a point on the terminals of the IllinoisCentral Railroad. Such service is completed when the car reaches the depot or holding tracks of the railroad company by which it is transported. Cars which are loaded with freight shipped into the state are held on the holding tracks of the railroads entering New Orleans until the shipper calls and pays the freight and instructs that they be delivered by the original terminal carrier to a connecting carrier for further transportation to the point where they are to be unloaded. Such freight may be sold in the cars and re-shipped or switched to the purchaser's station or warehouse.

THE TEXARKANA CASE.

In the case of Gulf, Colorado & Santa Fe Railway Company vs. Texas, 204 U. S. 403, 51 L. ed. 540, the Supreme Court established the doctrine that:

> "Whatever obligation may rest upon the carrier at the terminus of its transportation to deliver to some further carrier in obedience to the instructions of the owner, it is not acting as a carrier but simply as a forwarder."

This case applies to the conditions under which switching is performed by appellants at New Orleans.

The sixth stipulation of the agreed statement of facts in the case before the Court provides:

> "That when the cars loaded with interstate and intrastate freight arrive at New Orleans, the consignee is first notified that the freight is ready for delivery at depot or warehouse of the company; that after consignee calls and pays the freight bill, he gives a switching order to the agent of the railroad company transporting the shipment to New Orleans to have the car switched and placed on the terminal tracks, or on some industrial track connecting with the terminal tracks, in the city of New Orleans, for delivery; that this order is then submitted through proper agency to the employees of the Illinois Central Railroad Company, and the Illinois Central Railroad Company executes the switching order."

Manifestly, all of such cars must arrive in New Orleans on some other line than the Illinois Central, because, if the shipment is made via the Illinois Central Railroad, the service of switching the car from the holding track or depot to an industrial or terminal track on the Illinois Central Railroad is included in the through rate. Before the switching order is given by the owner of the freight the freight charges must be paid. A new arrangement is then made for the transportation of the cars from the depot or holding track of the original terminal carrier to a private industrial track connecting with the terminal rails of the Illinois Central Railroad.

Under this new contract the switching service is performed. Unless this new contract is made with the connecting carrier for the switching of the car from the depot of the original terminal carrier to another point within the city of New Orleans, there will be no further service performed by any carrier. The shipper would then be compelled to unload the shipment at the place of delivery designated by the original terminal carrier. As was said by the Court in the Gulf, Colorado & Santa Fe case,

> "The one contract of the railroad companies having been finished, he must make a new contract for his carriage to Goldthwaite and that would be subject to the law of the state to which that carriage was to be made."

There is no continuity of movement of cars from the point of shipment to a point located beyond the terminals of the original carriers in the city of New Orleans. The consignee takes possession, paying the freight to the initial carrier and assumes full control.

The seventh stipulation in the agreed statement of facts provides:

> "That the Illinois Central Railroad Company, in connection with the various railroads entering the city of New Orleans, has issued, published and now has in effect, various terminal tariffs covering terminal switching in the city of New Orleans, which tariffs do not include any rates for transporting the freight to or from the city of New Orleans, but simply cover the charges made for switching cars

> from the depot or yard of one railroad company to points on its terminals. Copies of all such tariffs are on file and approved by the Interstate Commerce Commission and with the Railroad Commission of Louisiana. It is understood that said tariffs can be referred to by either party at any time during the progress of this case or present any views in connection therewith."

This stipulation covers the service which the Railroad Commission of Louisiana, by its Order No. 295, seeks to control, in addition to the switch movements between points within the city of New Orleans where the cars are loaded at one industry and switched to another industry within the limits of New Orleans by the payment of a charge of $3.00 per car for car rental in addition to the switching charge.

If the tariffs of the Illinois Central Railroad Company do not include rates for "transporting the freight to or from the city of New Orleans but simply cover the charges made for switching cars from the depot or yard of one railroad company to points on its terminals," how, then, can it be said that the switching performed under such tariffs is interstate commerce and how can the complainants successfully urge, having made this admission, that the Railroad Commission of Louisiana may not order that such switching as is performed under such tariffs, be free from discrimination?

CHICAGO, MILWAUKEE & ST. PAUL VS. IOWA.

In the case of Chicago, Milwaukee & St. Paul Railway Company vs. Iowa, 233 U. S. 334, 58 L. ed. 988, the Court makes clear its position upon this question. The Chicago, Milwaukee & St. Paul Railway Company, in 1909, had refused to accept shipments of coal in carload lots at Davenport, Iowa, for points in that state when tendered in cars of other railroad companies by which the coal had been brought to Davenport from points in Illinois. The railway company insisted that it was entitled to furnish its own cars. Upon complaint, the Railroad Commission of Iowa issued an order requiring that.

> "Upon the arrival of loaded cars of coal at the city of Davenport, upon any line of railroad, when said cars are placed upon the interchange track at Davenport, as ordered or requested by the owner or consignee of said cars, and the freight paid thereon, and the ordinary billing in use by the respondent railway is tendered to it for a billing of said cars so placed, to a point on its own line within the State of Iowa, that the respondent railway company be, and is hereby, ordered and required to accept said billing, receive said cars so billed, and transport them on its own line to the point designated by the owner or consignee in said billing; and that it receive said car or cars in whatever equipment the same may be loaded, without requiring an unloading and reloading into its own equipment and

> transport said car or cars over its own line to points within this state, so noted, without unloading and reloading as above set forth, in the same manner that it receives cars from connecting lines, loaded in its own equipment. It is expressly understood, however, in this order, that no questions in relation to switching charges are determined."

The Supreme Court of the State of Iowa held the order to be a valid exercise of power by the Railroad Commission of Iowa. The Supreme Court of the United States, in reviewing the case, affirmed the judgment of the lower court. From the opinion rendered by Mr. Justice Hughes, we excerpt the following language, which is strongly applicable to the case now before the Court:

> "The Railroad Commission held that the transportation desired from Davenport was a purely intrastate service, saying, 'Under the admitted facts, the city of Davenport became a distributing point for coal shipped by the consignor. The certainty in regard to the shipments of coal ended at Davenport. The point where the same was to be shipped beyond Davenport, if at all, was determined after the arrival of the coal at Davenport. The coal was under the control of the consignee, and he could sell it in transit or at Davenport, or reconsign it to a point on respondents' railway, or any other railway, at its own discretion.' Upon the trial of the present suit in the state court, the state introduced in evidence the proceedings, decision and order of the Commission, and without further evidence

both parties rested. The Supreme Court of the State took the same view of the facts that the Commission had taken and accordingly held that the shipments were intrastate. The Court said that the facts showed that the coal was originally consigned to the coal company in Davenport, that it was there held until sales were made, that the consignee had taken delivery, paying the freight to the initial carrier, and assumed full control. 152 Iowa 317, 319; 130 N. W. 802. The record discloses no ground for assailing this finding. It is undoubtedly true that the question whether commerce is interstate or intrastate must be determined by the essential character of the commerce, and not by mere billing or forms of contract. Railroad Commission vs. Worthington, 255 U. S. 101, 56 L. ed. 1004, 32 Sup. Ct. Rep. 653; Texas & N. O. R. Co. vs. Sabine Tram Co., 227 U. S. 111, 57 L. ed. 442, 33 Sup. Ct. Rep. 229; Railroad Commission vs. Texas & Pacific R. Co., 229 U. S. 336, 57 L. ed. 1215, 33 Sup. Ct. Rep. 837. But the fact that commodities received on interstate shipments are reshipped by the consignees, in the cars in which they are received, to other points of destination, does not necessarily establish a continuity of movement, or prevent the reshipment to a point within the same state from having an independent and intrastate character. Gulf, C. & S. F. R. Co. vs. Texas, 204 U. S. 403, 51 L. ed. 540, 27 Sup. Ct. Rep. 360; Railroad Commission vs. Worthington, 225 U. S. 101, 109, 56 L. ed. 1004, 1008, 32 Sup. Ct. Rep. 653; Texas & N. O. R. Co. vs. Sabine Tram Co., 227 U. S. 111, 129, 130, 57 L. ed. 442, 449, 450, 33 Sup. Ct. Rep. 229. The question is with respect to the nature of the actual movement in the particular case;

> and we are unable to say upon this record that the state court has improperly characterized the traffic in question here. In the light of its decision, the order of the Commission must be taken as referring solely to intrastate transportation originating at Davenport."

Finally it is said that the order of the Commission interferes with interstate commerce because the cars in question were the vehicles of that commerce and were brought into the state as such. No question, however, is presented here as between the shippers and the owners of the cars, and no actual interference with interstate commerce is shown. Nor does it appear that any regulation under Federal authority has been violated.

MINNESOTA RATE CASE.

In the Minnesota Rate Case (Simpson vs. Shepherd, 230 U. S. 352) the general principles of state regulatory authority are fully discussed, and no doubt remains as to the view of the Court upon the great questions involved. The Court in that case says:

> "The legislation of states, safeguarding life and property and promoting comfort and convenience within its jurisdiction, may extend incidentally to the operations of the carrier in the conduct of interstate business, provided it does not subject that business to unreasonable demands and is not opposed to federal legislation."

And in discussing the reserved power of the states says:

> "Further, it is competent for a state to govern its internal commerce, to provide local improvements, to create and regulate local facilities, to adopt protective measures of a reasonable character in the interest of the health, safety, morals and welfare of its people, although intrastate commerce may, incidentally and indirectly, be involved."
>
> "The broadest meaning is given to the words 'govern' and 'regulate.'"

The contentions of the appellant are that the order of the Railroad Commission of Louisiana requires it to perform intracity switching against its will, and to use properties valued at many thousands of dollars which it has provided for its own use exclusively, in doing so, that it can refuse to accept cars at junction points within the city of New Orleans to be switched to team tracks or industrial tracks on its terminal lines; that it cannot be compelled by state authority to switch cars which reach New Orleans over other railroads, loaded with freight shipped to New Orleans from points outside the State of Louisiana; that it cannot be compelled to switch cars from a point on its New Orleans terminals to a connecting line at New Orleans; that it cannot be compelled to switch cars from one connecting line to another, in the city of New Orleans; and, finally, that it cannot be required by state authority to switch

cars from one point in New Orleans to another, although such cars are loaded and unloaded in the prescribed switching limits of the city, on a connecting line.

The case, therefore, presents the question of the power of a railroad company to refuse to turn its cars over to another railroad for movement beyond the junction point, when the junction point is within the city in which the cars are loaded, and of its power to refuse to accept cars at a junction point in any city and deliver them to team tracks or industry tracks on its lines, and finally of its power to refuse to switch cars that are moving from point to point in the city via junctions with other carriers.

If the contentions of appellants are sustained, it will enable railroads operating in the State of Louisiana to refuse to transport cars to points on their terminals, or between points on their terminals, and thereby close their terminals to public use except upon such terms as they may dictate.

If the order of the Railroad Commission is sustained, it will aid in the movement of traffic, promote the prompt and efficient movement of cars both for loading and unloading, permit the shipper to freely exercise his right to designate the route over which his shipments shall move, stimulate competition between carriers, encourage and permit the proper

use of railroad facilities and prevent unjust discrimination in the use of instruments of commerce.

CONCLUSION.

Since there is no attempt to fix the rates for the switching service required by the Commission's order, the only question is whether the state has the power, through its Railroad Commission, to require that what the carrier does for one it must do for all upon equal terms.

The authorities so abundantly support the affirmance of this proposition that argument is unnecessary. The question for the Court is whether the Commission acted within its powers. The enforcement of the order will compel the appellants to perform the so-called intracity delivery or switching service at such rates as the carriers may initiate. It is admitted that there are tariffs already on file providing rates for such service. The laws of Louisiana amply provide against an invasion of the Constitutional rights of the carrier. Only rates which are just and reasonable can be prescribed, and the actions of the Louisiana Railroad Commission are subject to review by the courts.

The switching service required by the order is a function of a common carrier. When performed without discrimination, it is a useful facility of commerce and does not impede it—a service which, while inde-

pendent of the original contract of carriage, is essentially a transportation service.

It guarantees an uninterrupted flow of commerce, and prevents the carriers from making effective combinations which would nullify the shipper's right to say over what routes his shipments shall be made. Any regulation which has for its purpose the securing of the expeditious movement of cars is in aid of commerce, and the ownership of the car, or the route over which it moves to its original termination, cannot be made the test of whether a connecting carrier will receive and transport such car to another destination, both being within the same city.

Reasonable compensation for the service may always be demanded, but when the compensation is reasonable the carrier should not be permitted to close its terminals except to those whom it may select.

The order of the Railroad Commission of Louisiana, being within its powers, and not in conflict with any federal regulation, should be upheld as a valid regulation of the instruments of commerce belonging to interstate railroads operating in the State of Louisiana.

Respectfully submitted,

RUFFIN G. PLEASANT,
Attorney General of Louisiana.

WYLIE M. BARROW,
Assistant Attorney General,
Attorney for Appellees.

"APPENDIX."

Agreement between counsel to supply documents not printed in the transcript.

"SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1914,

No. 423.

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,

vs.

C. L. de FUENTES, W. L. FOSTER, and OVERTON CADE, as Commissioners and Members of the RAILROAD COMMISSION OF LOUISIANA,
Appellees.

It is hereby stipulated and agreed by and between the undersigned counsel for the Appellant and Appellees, respectively, that:

Since the printed transcript of the record in this case does not contain the order granting an interlocutory injunction signed by United States Circuit Judge, Charles Parlange, the 25th day of February, A. D. 1904, at New Orleans, Louisiana, and the certified copy of Order No. 295 of the Railroad Commission of Louisiana, attached to the original answer of the defendants as a part thereof and

marked "Exhibit A," therefore, copies of these documents are supplied herewith and may be used by either plaintiffs or defendants in their briefs and arguments before the Court and considered by the Court.

GUSTAV LEMLE,
Attorney for Appellant.

(Signed)

WYLIE M. BARROW,
Assistant Attorney General,
Attorney for Appellees.

Interlocutory Injunction.

UNITED STATES CIRCUIT COURT,
EASTERN DISTRICT OF LOUISIANA,
No. 49.

ILLINOIS CENTRAL RAILROAD COMPANY

vs.

C. L. deFUENTES, W. L. FOSTER and OVERTON CADE, Commissioners and Members of the RAILROAD COMMISSION OF LOUISIANA.

In the Matter of the Rule Taken by Complainant on Defendants for an Injunction Pendente Lite.

This cause came on to be heard on the Twentieth day of February, 1904, Present: Gustave Lemle, Esq. Counsel for Complainant, and

Hon. Walter Guion, Attorney General of the State of Louisiana, Counsel for Defendants.

And the Court after hearing Counsel for both Complainant and Defendants, and after considering the sworn allegations of the Bill of Complaint, and being of the opinion that Complainant is entitled to an injunction pendente lite as prayed for:

IT IS ORDERED, ADJUDGED AND DECREED that a writ of injunction be issued out of and under the seal of this Court, addressed to C. L. DeFuentes, W. L. Foster and Overton Cade, Commissioners and Members of the Railroad Commission of Louisiana, and each of them, restraining them, and each of them, from in any manner enforcing or attempting to enforce the Rule No. 295 of said Railroad Commission of Louisiana heretofore entered on the 7th day of August, 1903, against Complainant; this injunction to continue in force during the pendency of this suit, or until further orders of this Court.

Dated at New Orleans, in the Eastern District of Louisiana, this 25th day of February, A. D. 1904.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Exhibit "A" to the Answer, Not Included in Transcript of Record.

RAILROAD COMMISSION OF LOUISISANA
BATON ROUGE,

ORDER NO. 295

At a general session of the Railroad Commission of Louisiana, held at its office in Baton Rouge, Friday, August 7th, 1903, the following general rule was adopted:

APPLICATION OF CAR SERVICE RULES.

No railroad company operating in the State of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects, or any shipper, or consignee, at rates approved or established by the Commission, whether such cars are loaded or empty, or whether such cars are to be loaded with freight to be shipped out of the State, or are loaded with freight shipped into the State.

All tariffs for the "service" of switching cars in the State of Louisiana shall be filed with the Commission within thirty days from the date of this

order, and all the Commission's rules and orders relative to rates, and changes in rates, will also apply to switching charges.

BY ORDER OF THE COMMISSION.

Baton Rouge, Louisiana,
August 8, 1903.

C. L. DE FUENTES, Chairman.

Commissioners: W. L. FOSTER.

OVERTON CADE.

Attest:

A true copy:

(SEAL)

(Sig) W. M. Barrow,
Secretary.